

1                   IN THE MATTER OF:

2                   US BEVERAGE, INC., Plaintiff,

3                   vs.

4                   JOHN BUSTER WALKER, II,

5                   and TRIDENT MARKETING, INC., Defendants.

6 -----  
7                   JOHN BUSTER WALKER, II,

8                   and TRIDENT MARKETING, INC.,

9                   Counterclaim Plaintiffs,

10                  vs.

11                  US BEVERAGE, INC.,

12                  Counterclaim Defendant,

13                  and

14                  GRADY DOWLING KITTRELL,

15                  THOMAS GOIN CLARK, III,

16                  and NORMAN "BUDDY" TODD,

17                  Third Party Defendants.

18  
19                  CIVIL ACTION NO.

20                  2:06-CV-496-SRW

21  
22                  DEPONENT: THOMAS GOIN CLARK, III

23                  DATE: November 16, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

US BEVERAGE, INC.,  
Plaintiff,

vs.  
JOHN BUSTER WALKER,  
II, and TRIDENT  
MARKETING, INC.,  
Defendants. CIVIL ACTION NO.  
2:06-CV-496-SRW

JOHN BUSTER WALKER,  
II, and TRIDENT  
MARKETING, INC.,  
Counterclaim  
Plaintiffs,

vs.  
US BEVERAGE, INC.,  
Counterclaim  
Defendant,

and  
GRADY DOWLING  
KITRELL, THOMAS GOIN  
CLARK, III, and  
NORMAN "BUDDY" TODD,  
Third Party  
Defendants.

\* \* \* \* \*  
DEPOSITION OF THOMAS GOIN CLARK, III,  
taken pursuant to notice and stipulation on  
behalf of the Defendants/Counterclaim  
Plaintiffs, in the Law Offices of Copeland,  
Franco, Screws & Gill, 444 South Perry Street,  
Montgomery, Alabama, before Tiffany B.  
Beasley, Certified Court Reporter and Notary  
Public in and for the State of Alabama at  
Large, on November 16, 2006, commencing at  
8:57 a.m.

## STIPULATIONS

It is stipulated and agreed by and

between counsel representing the parties that  
the deposition of **THOMAS GOIN CLARK, III**, may  
be taken before Tiffany B. Beasley, Certified  
Court Reporter and Notary Public in and for  
the State of Alabama at Large, without the  
formality of a commission; and all formality  
with respect to other procedural requirements  
is waived; that objections to questions, other  
than objections as to the form of the  
questions, need not be made at this time, but  
may be reserved for a ruling at such time as  
the deposition may be offered in evidence or  
used for any other purpose by either party as  
provided by the Federal Rules of Civil  
Procedure.

It is further stipulated and agreed by  
and between the parties hereto and the  
witness, that the signature of the witness to  
this deposition is hereby waived.

## APPEARANCES

FOR THE PLAINTIFF/COUNTERCLAIM DEFENDANT/THIRD  
PARTY DEFENDANTS:

**C. NELSON GILL, ESQUIRE**

Copeland, Franco, Screws & Gill

444 South Perry Street

Montgomery, Alabama 36104

FOR THE DEFENDANTS/COUNTERCLAIM PLAINTIFFS:

**RAYMOND L. JACKSON, JR., ESQUIRE**

660 North College Street

Suite D

Auburn, Alabama 36830

ALSO PRESENT:

GRADY DOWLING KITRELL

JOHN BUSTER WALKER, II

## INDEX

<u>EXAMINATION</u>	<u>Page</u>
MR. JACKSON.....	5
<u>DEFENDANTS' EXHIBITS</u>	<u>Page</u>
1 Composite Exhibit	175
(The following exhibits were previously marked in this case and referred to at the following pages:)	
4.....	134
5.....	132
16.....	92
18.....	143
19.....	148
20.....	152
21.....	160
22.....	167
23.....	169
24.....	172
25.....	173

1 included a salary plus commission.

2 Q. Were you or Grady placed on a salary plus  
3 commission at that time?

4 A. No.

5 Q. Why not?

6 A. Well, the -- the sales model, we believed, was  
7 based on -- the sales model that we were  
8 trying to develop was the salary plus  
9 commission, with also a portion of that  
10 commission being based on relationships. And  
11 we felt that was the best way of -- that was  
12 the best incentive package for a salesperson,  
13 or a person involved in sales.

14 Q. Were you and Grady put on a set salary at that  
15 point in time?

16 A. We were put on salary. I mean, we were always  
17 on salary.

18 Q. Did Mr. Walker consent to having a salary  
19 based on commission?

20 A. Yes.

21 Q. Do you have any notes or minutes reflecting  
22 that consent?

23 A. I don't know. I can look and see.

50

1 Q. Can you check?

2 A. Yeah.

3 Q. Do you recall what the amount of sales  
4 Mr. Walker needed to reach in order to receive  
5 his maximum salary?

6 A. No.

7 Q. After Mr. Walker was placed on commission, do  
8 you know why the company did not pay any sales  
9 commissions to him until August of 2004?

10 MR. GILL: Object to the form.

11 A. I don't recall that it was August 2004. I  
12 don't know.

13 Q. Do you know when Mr. Walker started submitting  
14 sales commission reports?

15 A. No.

16 Q. Do you know if it would have been in December  
17 of 2003?

18 A. I don't know.

19 Q. Do you recall there being a gap between Mr. --  
20 gap in time between Mr. Walker's submitting  
21 sales commission reports and the company  
22 paying sales commissions to Mr. Walker?

23 A. I don't recall that, Raymond -- or

1 Mr. Jackson. I'm sorry.

2 Q. That's fine.

3 A. -- however, I wasn't involved in payroll at  
4 that time. That was one of the accounting  
5 duties that -- or part that Grady was involved  
6 in, and so -- and there's a lot of these  
7 questions that you ask me, I just wasn't  
8 involved in those. I was told at the last,  
9 which was in accordance with the way that we  
10 designed the company.

11 Q. Did you and Mr. Kittrell have to approve  
12 Mr. Walker's commission request?

13 A. A formal commission -- or a formal approval?  
14 I wasn't -- I didn't have to. I wasn't  
15 involved in that.

16 Q. Who would have been in charge of that at that  
17 time?

18 A. John and Grady would have been involved in  
19 that aspect of it.

20 Q. At the time that Mr. Walker's compensation was  
21 changed in October 2003, did he have any other  
22 duties with the company other than sales?

23 MR. GILL: Object to the form.

52

1 A. Official -- we had no job descriptions, so was  
2 there an official or unofficial duty? That, I  
3 couldn't tell you. His -- I can only go back  
4 to our original agreement, was that I would  
5 handle everything so that he could totally be  
6 involved in sales.

7 Q. Do you know if Mr. Walker's responsibilities  
8 with US Beverage changed in October of 2003?

9 A. No, I don't know if they did or not. I  
10 believe that they were more focused on sales.  
11 And that was the point, that if he was to  
12 operate as a commission salesperson, then he  
13 should be given the freedom to sell and to  
14 manage the sales effort.

15 Q. Okay. Did you have any role in the company --  
16 and let's talk about the period October 2003  
17 to roughly July of 2005 -- in determining  
18 which expenses would be reimbursed by the  
19 company?

20 A. Yes.

21 Q. And what was your role as -- as to that?

22 A. My role was to analyze what we could afford to  
23 pay out and determine if we could pay

1 expenses.

2 Q. Okay. Would -- as part of that role, would  
3 you have reviewed expense requests that  
4 Mr. Walker had submitted?

5 A. Yes. I reviewed them for all of us.

6 Q. Would you have made the decision whether or  
7 not an expense request is reimbursable by the  
8 company?

9 A. Ultimately, yes, it was dictated by the  
10 balance of the checkbook.

11 Q. So you're saying whether or not an expense was  
12 a business-related expense, it could be  
13 reimbursed by US Beverage determined by  
14 whether or not there's money in the checkbook?

15 A. Well --

16 MR. GILL: Object to the form.

17 THE WITNESS: I'm sorry.

18 MR. GILL: Go ahead.

19 A. Not exactly. My job was to determine what  
20 bills -- what order bills should be paid, and  
21 an expense was treated as a bill. And so we  
22 might have money in the checkbook; however, I  
23 wanted to keep the rents paid, loans paid, and

54

1 the lights and power and the -- and the fuel  
2 for utilities and payroll paid first, always  
3 came first to me.

4 Q. Were you aware that Mr. Walker's expenses for  
5 the period between October 2003 and July 2005  
6 were not reimbursed by US Beverage?

7 MR. GILL: Object to the form.

8 A. I realize that nobody's expenses were  
9 reimbursed between those periods.

10 Q. And when you say "nobody," who are you  
11 including in that?

12 A. The three officers.

13 Q. And that would have been you and Mr. Kittrell  
14 and John Walker?

15 A. Yes.

16 Q. What about other employees that work for your  
17 company; were their -- their expenses  
18 reimbursed during that period?

19 A. I don't know if they had expenses during that  
20 period. We would have reimbursed them if they  
21 had had some.

22 Q. Okay. And the expenses, again, that  
23 Mr. Walker's -- that made it from October of

1 2003 until July of 2005, has US Beverage ever  
2 reimbursed Mr. Walker for these expenses?

3 MR. GILL: Object to the form.

4 A. Some, I think.

5 Q. When would those reimbursements have been  
6 made?

7 A. The specific dates, I don't know.

8 Q. After July of 2005 -- or specifically,  
9 July 19th, 2005, are you aware of any payments  
10 being made by US Beverage to Mr. Walker?

11 A. Payments for what?

12 Q. Or any money being -- payments, money, checks,  
13 anything, any funds being transferred from US  
14 Beverage to --

15 A. After July of 2005?

16 Q. Yes.

17 A. I'm not aware of any.

18 Q. Between October 2003 and July of 2005, was  
19 there any time period in which you or  
20 Mr. Kittrell did not receive your full salary  
21 from US Beverage?

22 A. Yes.

23 Q. First I'll ask you, was there one instance or

55

1 more than one instances of you or Mr. Kittrell  
2 not receiving your full salary during that  
3 period?

4 A. I -- I don't recall that. I'm not sure. I  
5 think there was -- I can think of one for  
6 sure, but I can't remember if there were other  
7 times.

8 Q. And tell us about the one instance for sure  
9 that you can think of.

10 A. The one instance -- and I don't remember the  
11 details on it -- but it was after the  
12 arrangement of the new salaries -- or the new  
13 salary arrangement between the partners and  
14 the company. John was paid his new salary,  
15 and I know that I wasn't paid a salary for  
16 either two or three weeks, and I don't think  
17 Mr. Kittrell was paid one for two or three  
18 weeks. But I do remember that John was paid  
19 his full new salary at that point in time.

20 Q. And going back to talking about the  
21 compensation scheme Mr. Walker was put on in  
22 October 2003, was it, basically, like a base  
23 salary plus commission?

1 A. It was a -- yes, it was a base. It was  
 2 weighted because of his position with the  
 3 company. It wouldn't be something that we  
 4 would give somebody else that high.  
 5 Q. Do you recall what the base salary was?  
 6 A. No. I think there's some records.  
 7 Q. How would it compare to your salary?  
 8 A. Well, I don't know. Because he had --  
 9 because -- I do know that with his base plus  
 10 commissions, he had the potential to actually  
 11 earn more commissions than I could possibly  
 12 make as a base -- or as my total salary  
 13 package. I know that it was less than mine.  
 14 But it was designed to incentivize (phonetic)  
 15 the sales, and -- as we do with all salesmen,  
 16 and not designed, you know, for any other  
 17 reason like punishment. It was set -- this is  
 18 the direction that we wanted to take the  
 19 company, and we wanted to make sure that  
 20 John's salary was based on a weighted factor  
 21 so that he could make or exceed what Grady and  
 22 I could make as our -- with our salaries.

58

23 Q. When you said that during that two- to  
 1 three-week period you paid Mr. Walker's  
 2 salary, are you referring to his base salary?  
 3 A. Uh-huh, yes.  
 4 Q. Why did US Beverage stop paying Mr. Walker  
 5 in -- July 19th, 2005?  
 6 A. We determined that -- the partnership  
 7 determined that we couldn't afford to pay the  
 8 officers at that time.  
 9 Q. And was there a vote of the shareholders as to  
 10 that issue?  
 11 A. Yes.  
 12 Q. Was there a decision made to suspend officers'  
 13 salaries for 90 days?  
 14 A. A decision made to suspend the salaries for a  
 15 period of at least 90 days.  
 16 Q. Who voted in favor of that decision?  
 17 A. Well, Grady and I. We were the only two  
 18 there.  
 19 Q. Was Mr. Walker consulted?  
 20 A. Was he consulted? He was invited to the  
 21 meeting and didn't come to it. I mean...  
 22 Q. How was Mr. Walker informed of this decision  
 23 by you and Grady?

1 A. The same way we informed him of everything, in  
 2 daily conversation -- or a conversation by  
 3 phone, I mean.  
 4 Q. Had you taken any pay cuts before this  
 5 decision to suspend salary?  
 6 A. No.  
 7 Q. When was your salary restored after July 19th,  
 8 2005?  
 9 A. I don't recall the exact date, but I believe  
 10 it was towards the end of November.  
 11 Q. Since then, have you been paid back for any of  
 12 the lost wages?  
 13 A. No.  
 14 Q. Do you know when Grady Kittrell's salary was  
 15 restored?  
 16 A. No. Sometime after that. I believe the  
 17 following year, but I'm not sure.  
 18 Q. Has John Walker's salary ever been restored?  
 19 A. No.  
 20 Q. Why not?  
 21 A. Well, we received an opinion that John had  
 22 abandoned the business and that was no  
 23 longer -- we held out as long as we could,

60

1 and -- but at that time, John had abandoned  
 2 the business.  
 3 Q. When did you receive that opinion?  
 4 A. Sometime in the fall.  
 5 Q. Who did that opinion come from?  
 6 A. One of our corporate attorneys, I believe.  
 7 Q. Is that opinion in written form?  
 8 A. I don't think so.  
 9 Q. Was that opinion ever shared with John Walker?  
 10 A. Yes.  
 11 Q. When --  
 12 A. I believe it was --  
 13 Q. -- was that?  
 14 A. -- I'm quite sure.  
 15 Q. Did you share it with him?  
 16 A. I don't recall that.  
 17 Q. Do you recall ever discussing with John Walker  
 18 the fact that his salary wasn't going to be  
 19 restored?  
 20 A. I did not do that, no.  
 21 Q. Have you had any conversations with John  
 22 Walker since July 19th, 2005, about his salary  
 23 or compensation?

1 **A. I don't recall.**  
 2 **Q.** What do you recall about the proposal to sell  
 3 Juice Alive to day care centers?  
 4 **A. I recall that -- there being some arrangement**  
 5 **where John and Ryan Hamner would create a**  
 6 **market for our day care product on the**  
 7 **Internet.**  
 8 **Q.** And what was the day care product? Just  
 9 describe it.  
 10 **A. It was a hundred percent seven-plus-one juice.**  
 11 **Hundred percent juice. Mixed ratio was**  
 12 **seven-plus-one.**  
 13 **Q.** And this juice, would this be a frozen slush  
 14 or just a --  
 15 **A. It's the -- it's the same juice as the frozen**  
 16 **slush, but it was just juice for -- sold in a**  
 17 **juice -- I mean, sold the exact same way,**  
 18 **packed the exact -- the exact same -- or**  
 19 **similar way. Just not frozen. The end user**  
 20 **didn't freeze it.**  
 21 **Q.** Who brought up this proposal to sell the day  
 22 care juice under the Juice Alive name?  
 23 **A. I believe John and Ryan.**

78

1 **Q.** Do you recall if there was any direct mail  
 2 advertisements sent out to day care centers?  
 3 **A. Yes, I do recall that there was, and it was a**  
 4 **huge fiasco.**  
 5 **Q.** How was it a huge fiasco?  
 6 **A. Well, we didn't really have the money to do**  
 7 **it, and our return on the investment was --**  
 8 **was way, way, way lower than expectation.**  
 9 **Q.** When you said you didn't have the -- the  
 10 company didn't have the money to do it, how  
 11 much money did US Beverage invest in this day  
 12 care project?  
 13 **A. I don't recall. I just know that we didn't**  
 14 **have the money to do it. It was a financial**  
 15 **strain to the business to do it, and it**  
 16 **really -- it was just another bad investment.**  
 17 **Q.** At that point in time, did US Beverage have  
 18 the financial wherewithal to start its own  
 19 brand?

MR. GILL: Object to the form.

20  
 21 **A. Yes.**  
 22 **Q.** How so?  
 23 **A. Well, because you can start a brand with no**

1 **money. In Montgomery, Alabama, our largest**  
 2 **competitor in the school business, his**  
 3 **brand -- his name is Bill Givens, and -- well,**  
 4 **he was required to come up with a brand. He**  
 5 **came up with Givens Juice, and he spent no**  
 6 **money on it. And up until recently, had the**  
 7 **day care business with his brand, which he**  
 8 **paid no money to call it Givens Juice.**  
 9 **Q.** Can you develop and market a brand without any  
 10 money?  
 11 **A. Without cash?**  
 12 **Q.** Yes.  
 13 **A. Yes.**  
 14 **Q.** Do you recall what US Beverage would have  
 15 spent money on as regards this day care juice  
 16 business?  
 17 **A. What we would have spent money on in regards**  
 18 **to what exactly?**  
 19 **Q.** I mean, you said before it was a bad  
 20 investment; you didn't have the money to do  
 21 it. I'm asking you what specifically US  
 22 Beverage would have spent money -- money on as  
 23 part of this day care juice venture.

80

1 **A. I believe that we spent money on the -- but I**  
 2 **can't say for sure, but I believe we spent**  
 3 **money on the production -- of the printing of**  
 4 **the flyer, or the mailer itself. I believe we**  
 5 **spent -- we paid for the postage, and I**  
 6 **believe that we paid for a company to mail it**  
 7 **for us, if I'm not mistaken.**  
 8 **Q.** Anything else?  
 9 **A. No. But what I do recall is that we paid no**  
 10 **money for the Juice Alive name because we**  
 11 **believed it was ours.**  
 12 **Q.** Well, I didn't ask you that.  
 13 **A. Well, I'm trying to relate the out-of-pocket**  
 14 **expenses to do this and --**  
 15 **Q.** Okay. Well -- okay. Any other expenses that  
 16 you would have spent money on other than what  
 17 we've just discussed?  
 18 **A. Well, I think we -- we would -- I believe we**  
 19 **paid for some shipping costs of different**  
 20 **things.**  
 21 **Q.** Would that not have been reimbursed by the  
 22 purchasers of the juice?  
 23 **A. No.**



1 and we would -- as we would acquire a  
 2 convenience store, we would -- under that  
 3 fashion, somebody said they wanted to do  
 4 business with us, we just -- we'd slap a  
 machine in there and start losing money with  
 6 them. And we do some business -- we have  
 7 other products that we can sell to convenience  
 8 stores, and we still -- and we'll sell them  
 9 something if they'll pay for it up front. But  
 10 to do business like we did before, we are --  
 11 we made a decision to get out of the  
 12 convenience store business in that fashion.

13 Q. Do you know what role Ryan Hamner had in the  
 14 creation of the Juice Alive name?

15 A. I was told that he was a expert on Internet  
 16 marketing.

17 Q. Is Ryan Hamner an employee of US Beverage?

18 A. No.

19 Q. Has he ever been an employee of US Beverage?

20 A. No.

21 Q. Just one quick follow-up as to the day care  
 22 juice promotion that we talked about earlier.

23 Was US Beverage assigned a specific territory

90

1 to sell day care -- to sell to day cares?

2 A. Assigned a specific territory?

3 Q. Yes.

4 A. By whom? By Juice Alive?

5 Q. By anyone.

6 A. Well, we sold -- no.

7 Q. In terms of sending out these flyers and  
 8 selling the Juice Alive product, was US  
 9 Beverage assigned three states?

10 A. I don't recall that. I don't even actually  
 11 know where we sent the fliers to. I wouldn't  
 12 have -- I -- I don't recall that.

13 Q. Do you recall if Trident Marketing sent the  
 14 flyers out?

15 A. I'm not trying to bounce around the question.  
 16 I don't recall. I don't know where the fliers  
 17 were sent to, actually.

18 Q. Is it your contention that US Beverage paid  
 for the flyers that were sent out by Trident  
 Marketing to day care centers to sell day care  
 21 juice?

22 A. Yes. I'm sorry. Would you ask me that  
 23 question again?

1 Q. Is it your contention that US Beverage paid  
 2 for the flyers that were sent out by Trident  
 3 Marketing outside of the three states?

4 MR. GILL: Object to the form.

5 A. It's my contention that US Beverage paid for  
 6 the materials involved in this experiment that  
 7 we were doing.

8 Q. I think you touched on it before, but did US  
 9 Beverage enter into a licensing agreement with  
 10 Trident Marketing to distribute Juice Alive?

11 A. When did we touch on that?

12 Q. You mentioned it a few minutes ago. You said  
 13 it was a part of a buyout, I think is what you  
 14 said.

15 A. Well, we -- no. We proposed -- I think it's  
 16 two different issues there. We proposed as a  
 17 part of a buyout to give the Juice Alive to  
 18 John as part of the buyout plan. Not to just  
 19 simply give it to him.

20 Q. And I'm going to show you what was marked as  
 21 Defendant's Exhibit 16 in the deposition of  
 22 Grady Kittrell.

23 A. Uh-huh.

92

1 Q. And rather than reproduce all these exhibits  
 2 again, I'm just going to use --

3 MR. JACKSON: If it's okay with you,  
 4 Nelson.

5 Q. -- use exhibits from the first deposition.  
 6 (Defendants' Exhibit 16 was  
 7 previously marked and is not  
 8 attached hereto.)

9 MR. GILL: Well, as long as we  
 10 reference it and we're clear.

11 Q. I ask you to read the first sentence under the  
 12 word "Gary" --

13 A. Uh-huh.

14 Q. -- from that document.

15 A. (As read:) We have reached an agreement with  
 16 Juice Alive to start distribution of the Juice  
 17 Alive brand in our 100 percent juice products.

18 Q. Okay. And who is that document signed by?

19 A. Tom Clark.

20 Q. And that's you; right?

21 A. Uh-huh.

22 Q. Is that your signature?

23 A. Yes.

1 Q. Do you remember creating that document?

2 A. Yes.

3 Q. Why don't you read the next sentence?

4 A. **(As read:) Please let this signed fax serve as**  
**official authorization for you to begin**  
6 **selling US Beverage, Inc., the Juice Alive**  
7 **products with 1.20 increase per case to be**  
8 **paid to Juice Alive.**

9 Q. Does that fax -- strike that question. I'm  
10 sorry.

11 If US Beverage owned the name  
12 Juice Alive, why did US Beverage, pursuant to  
13 this fax, agree to pay a case up-charge to  
14 Juice Alive?

15 MR. GILL: Object to the form.

16 A. **It was done as a -- under coercion, under the**  
17 **most stressful circumstances possible. It was**  
18 **done in a good faith on the part of US**  
19 **Beverage to attempt to bring back the original**  
20 **proposal, or assemblance of the original**  
21 **proposal, of August, and it was our show of**  
22 **good faith that we believed that at that point**  
23 **in time, if we handed over Juice Alive to John**

94

1 **under the circumstances in which this**  
2 **agreement was made, that we could finish our**  
3 **separation.**

4 Q. Did US Beverage purchase any Juice Alive  
5 products pursuant to this agreement?

6 A. Yes.

7 Q. Did US Beverage pay the case up-charge for  
8 those --

9 A. Yes.

10 Q. -- products?

11 A. Yes.

12 Q. For how long did US Beverage continue  
13 purchasing Juice Alive products pursuant to  
14 this agreement?

15 A. **Through May of the following year.**

16 Q. And this agreement was dated -- I think it's  
17 dated November 18th, 2005; is that correct?

18 A. Yes.

19 Q. And would the fax have been sent on the same  
20 day?

21 A. **It would have been sent around that time for**  
22 **sure.**

23 Q. And who's Gary that it's made out to?

1 A. **Gary is the -- our representative with Supreme**  
2 **Manufacturing.**

3 Q. And you mentioned that this was signed under  
4 coercion.

5 A. Yes.

6 Q. Can you describe that for us?

7 A. **Yes. John contacted -- we were -- this was**  
8 **signed at the Mississippi -- or this agreement**  
9 **was made at the Mississippi trade show, if I'm**  
10 **not mistaken. And Grady and John met and**  
11 **discussed some things, then I was brought in**  
12 **at the end of the deal, I think. When they**  
13 **laid out the solution for -- for logical**  
14 **separation, prior to that arrangement, or**  
15 **prior to that meeting, Mr. Walker had called**  
16 **me and notified me that he had a booth at the**  
17 **Mississippi show and was going to be selling**  
18 **his Juice Alive product individually unless --**  
19 **and we also had a booth there -- and that**  
20 **unless we agreed to -- to start selling his**  
21 **product, that he would compete against us. We**  
22 **were already in extreme financial trouble. We**  
23 **had no sales force. Our -- John had**

96

1 **abandoned -- or John had not been selling in**  
2 **our business for quite some time, and we were**  
3 **essentially on our last leg financially.**

4 **And we had -- we felt like we**  
5 **had no choice at this point in time but to**  
6 **cooperate with John so that we could join**  
7 **forces and sell -- it was the only chance we**  
8 **were going to have to -- only chance we had of**  
9 **making it financially, we felt like at the**  
10 **time, was to submit to this coercive behavior.**

11 **You know, either you -- which**  
12 **was presented to us, either you buy our**  
13 **product, or I'm competing against you, and**  
14 **I'll put you out of business. Because as John**  
15 **is our salesperson to all of our contacts at**  
16 **that time, John was still -- John was all our**  
17 **contacts knew of US Beverage. And our -- like**  
18 **any other sales thing, it's a relationship.**  
19 **There's not necessarily a loyalty to the**  
20 **company; there's a loyalty to the**  
21 **relationship. And we had absolutely no choice**  
22 **at the time but to sign it or go out of**  
23 **business.**



MR. GILL: Well, he is not a lawyer.

are the representative of Mr. Walker?

**A. I'm the dumb one. I don't even know what a TRO is. I mean, what --**

**A. Yes.**

MR. GILL: We didn't serve a TRO in this case.

**Q. How so?**

**A. What is a TRO?**

**A. Well, on one of the brands, they -- or on one of the bids, they bid Juice Alive. After the -- there was a period of time after we sent a letter to Dispensing Systems, they quit putting that on the bid. But I also contend that -- at the Alabama trade show, I contend that just based on what John Walker told me was that he was working with Dispensing Systems at the trade show while he was representing us; that he had set a tentative arrangement contingent on us succumbing to his demands that he would start selling to them, and then they did start bidding Juice Alive on one of the bids -- at least one of the bids. I think several of the bids, but...**

MR. JACKSON: I asked him if -- in response to -- rather than signing this, and he says, well, you're the attorney; you know we couldn't get that done in two or three days. Well, damn, you know. But we'll go forward. Let's take a brief break, and we'll...

(Brief recess taken.)

**Q. You've referred to one bid in particular. Which bid was that?**

**A. I'm not sure.**

**Q. Are you aware of any customers that US Beverage has lost within 200 miles of**

126

128

**A. I don't know if they do or not.**

Montgomery due to Mr. Walker's activities?

**Q. What business do you claim that Mr. Walker has competed for or taken from US Beverage within 200 miles of Montgomery?**

**A. I would have to -- once again, I think we've lost some in that 200-mile radius, but I would have -- have to look at a map of that, really, and with a -- some sort of measurement device. I do think that we've had to drop our price on a lot of business due to the competing against our own partner with our own brand.**

**A. I'd have to look at that and -- I know -- the only -- the only things I can say for sure is all of the Alabama business that's within 200 miles -- or I shouldn't say all of the Alabama business. I know that Mr. Walker or his representatives have competed against us in Alabama territories within 200 miles, and I would have to look at a geographic map to -- or a map of a compass, I guess, to -- to give you some specifics on that.**

**Q. Well, let's limit it to the state of Alabama. Are you aware of any customers that you've lost in the state of Alabama due to the activities of Mr. Walker?**

**Q. You mentioned Mr. Walker's representatives. Who are his representatives you're referring to?**

**A. Dispensing Systems didn't do very well against us. We don't think they -- I think their plan to put us out of business there hasn't worked so far, although we have lowered our price many, many times on a Dispensing Systems bid, thousands of -- tens of thousands of dollars worth.**

**A. In the -- are you -- I'm referring to in Alabama as several -- I think we've competed against Dispensing Systems of Florida, maybe Dispensing Systems of Georgia, and Dispensing Systems of Alabama.**

**Q. What about any customers in the state of Mississippi that US Beverage claims it's lost due to the activities of Mr. Walker?**

**Q. And is it your contention that those companies**

**A. That's where I would have to look at the map.**

**I think we've lost a few, but I'm not sure who they might be. Once again, passing out flyers, I was told that passing out flyers, making calls that said \$60 a case when we were at 74.52, we lost some business. I don't know exactly who they are, but we certainly have had to lower our prices, and it's cost us tens of thousands of dollars.**

**Q.** Would your records reflect which customers in Mississippi you claim you've lost due to the activities of Mr. Walker?

**A.** Yeah. And if I saw a map, I could tell you, but I -- or if I saw -- if I looked at a map and took my little measuring device, figured out what the radius was -- would it show us -- I already know -- I don't know that our records would actually -- there's nothing that says, lost due to John Walker or lost due to Juice Alive or anything like that, but we know who we do business with and who we don't do business with. And, once again, we've got about 1200 accounts. Not all schools. But I just don't -- I don't know everybody and

130

**everybody's geography.**

**Q.** And make sure I understand. So what you're saying is if you -- are you saying it is possible or not possible that if you looked at your records that you could --

**A.** If I look at the records, I could tell you, yes.

**Q.** Is that something you could look at later and provide that information to your attorney?

**A.** Yes.

**Q.** Thank you. Have you made any statements regarding John Walker or Juice Alive to any -- I guess start with anyone.

**A.** I've made millions of statements.

**Q.** Okay. Well, what about since this lawsuit has been filed?

**A.** I've made lots of statements.

**Q.** Okay. Who do you recall having made statements to regarding -- and I'm not talking about your attorney or anybody associated with your attorney or me or anything in this litigation; I'm talking about third parties not involved -- not involved with US Beverage

or involved in this dispute.

**A.** My statements -- I -- my statements concerning John have all been very favorable to John. Any statement I've made -- and I've made many of those frequently -- to customers, to friends, to people who are outside the business that are just -- that are wondering what's going on, I have oftentimes said that John is one of the nicest fellows you'll ever meet; he's a darn good salesperson, and I do not criticize John to our customers, to anybody. This isn't a personal matter. But I do not say bad things about John to anybody.

**Q.** What about statements you've made regarding Juice Alive or the Juice Alive brand to any third party? Again, not talking about anybody -- any of your attorneys or anybody inside US Beverage, but to third parties.

**A.** The only thing that I've said about the Juice Alive brand, I wrote a letter to the child nutrition directors of Mississippi who were -- after receiving a lot of complaints, they didn't understand what was going on and that

132

**it might cost us some business just born out of confusion. I wrote a letter to them trying to clarify my position on the whole issue.**

**Q.** And is that the letter that's been discussed in the other depositions?

**A.** Which -- which letter is that?  
(Off-the-record discussion.)

**Q.** And I'll show you what's marked as Defendants' Exhibit 5 to the deposition of Norman Todd. Ask him if he can identify the document.

(Defendants' Exhibit 5 was previously marked and is not attached hereto.)

**A.** Yeah. And this is the one that I thought you might be asking about. No, I did not authorize this. Did not produce this letter.

MR. GILL: Look at it closely.

**A.** It says it's Buddy Todd's. Sales manager. I didn't do it.

MR. GILL: Well, I understand but look at the -- all the pages.

**Q.** I believe there was an attachment to that e-mail that you have.